

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

REX WHITE)	
Claimant)	
VS.)	
)	Docket No. 177,567
MOLZ OIL COMPANY)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge John D. Clark on August 10, 1999. The Appeals Board heard oral argument December 21, 1999.

APPEARANCES

Joseph Seiwert of Wichita, Kansas, appeared on behalf of claimant. William L. Townsley, III, of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant's left eye was severely injured on June 5, 1991 while he was repairing a combine during wheat harvest. Finding claimant's employment was an agricultural pursuit, the ALJ denied claimant workers compensation benefits.¹ On appeal, claimant contends he is entitled to benefits under the Act because at the time of the accident he was an employee of respondent Molz Oil Company which is not an employment primarily engaged in an agricultural pursuit.²

Respondent contends the result reached in the Award entered by the ALJ should be affirmed.

¹ K.S.A. 44-505(a) (*Ensley*).

² See *Frost v. Builders Service, Inc.*, 13 Kan. App. 2d 5, 760 P.2d 43 (1988).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in his Award. The parties agree that claimant suffered an accidental injury that resulted in a 100 percent functional impairment to his left eye. The central issue concerns whether an employer/employee relationship existed between claimant and respondent such that the accidental injury arose out of and in the course of his employment with respondent.

Claimant makes a persuasive argument that he would not have quit his permanent full time job to earn less money doing seasonal farm work for Ron Molz. Clearly what claimant desired was a full time roustabout job with Molz Oil Company. But claimant cannot point to any document or even any specific conversation that clearly supports his contention that he was hired by Molz Oil Company. Based on the testimony of Ron Molz and Jim Molz, the Board concludes that claimant was hired by Ron Molz to work in his farming operation and was not hired by Molz Oil Company. The employment relationship with Ron Molz may have been intended as a stepping stone to eventual employment with Molz Oil Company, but at the time of his accidental injury claimant was not an employee of Molz Oil Company.

The Board, for the reason stated above, affirms the finding of no coverage under the Kansas Workers Compensation Act.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated August 10, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
William L. Townsley III, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director